

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

FILED  
AUG 18 2004  
PUBLIC SERVICE  
COMMISSION

In the matter of:	)	
	)	
SAEID SHAFIZADEH	)	
	)	
COMPLAINANT	)	
	)	CASE NO.: 2003-00400
v.	)	
	)	
CINGULAR WIRELESS-KENTUCKY	)	
	)	
DEFENDANT	)	

COMPLAINANT'S OPPOSITION TO JACKSON KELLY PLLC'S  
EMERGENCY MOTION

Jackson Kelly PLLC ("JKP") has filed a motion with the Public Service Commission ("PSC") for entry of an order striking, prohibiting disclosure of, substituting and destruction of some documents. Specifically, JKP is seeking an order to "immediately" strike the documents included under the Tab 1 of Cingular's Responses to the Complainant's Discovery request. Additionally, JKP is seeking a prohibition on the disclosure of the said documents by the "parties;" substitution of, again, "immediately," of documents it has attached, and finally the destruction of, again, "immediately," the documents submitted under the Tab 1. Without citing a single authority, and by clothing its pleading as an emergency motion, JKP makes the conclusory assertion that "under the circumstances, the relief requested in this motion may be granted by the Commission without notice or a hearing." (Emphasis added). Complainant opposes the

motion on grounds that are more fully explained below, and as such, the PSC should deny JKP's motion.

JKP is not a party to this proceedings therefore, filing any papers or pleadings on its own behalf without first seeking leave of the PSC to intervene was inappropriate. See 807 KAR 5:001 § 3(8). The *Rules of Procedure* do not grant special privileges to JKP, nor do they exempt JKP from complying with those rules. Next, having failed to follow the *Rules of Procedure* in seeking leave to intervene, JKP claims that it filed "certain nonpublic documents that were not intended to produce." (Emphasis added). The Tab 1 of Cingular's Responses includes photocopies of the following: complainant's wireless billing statements from January 2003 through January 2004, some blank pages, and photocopies of wireless billing statements for the account no. 01117005-001-35 from June through November of 2003.

JKP having already argued on behalf of Cingular that the PSC lacked jurisdiction over issue of the social security number raised in the complaint, is now invoking that jurisdiction to protect a self-declared nonpublic document. In essence JKP selectively grants or denies jurisdiction to PSC as it sees it fit. JKP can not assert any privacy interest in those documents because they do not contain any records pertaining to JKP; unless of course, there are some material written with an invisible ink on the blank pages.

With its "Emergency" motion, JKP has filed another identical set of photocopies of the complainant's wireless billing statements from January 2003 through January 2004. Therefore, JKP is presumably contending that complainant's wireless billing statements are public record. That leaves the photocopies of wireless billing statements for the account no. 01117005-001-35 from June through November of 2003. However, any claim of privacy interest by JKP in those documents is without foundation.

First, those statements were specifically sought by the complainant's interrogatory number 27 and the request for production number 1. Notwithstanding the provisions of 807 KAR 5:001 § 7(5)(a), Cingular has avoided to respond by invoking some hypothetical privacy right. Second, even if there were a privacy issue remotely present, Carlton M. Padgett, the subscriber who holds that account, surrendered that right when he conveniently used complainant's funds for almost four months without any complaints and at the expense of complainant's wireless service. Third, Padgett's address as it appears on the face of the statements, can also be found on the attached Bell South Real Pages record and therefore, not subject to confidential treatment as provided by 807 KAR 5:001 § 9(b). Fourth, this would leave the listing of the telephone numbers on Padgett's itemized listing, however, those numbers by themselves without any identifiable characteristics are meaningless. Though, in case of

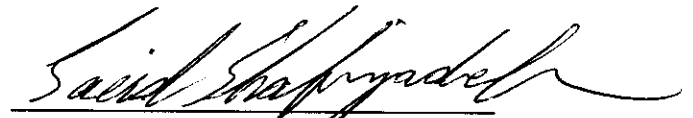
the complainant's statements since some of the calls were made to complainant's legal clients, the disclosure could clearly raise some concerns.

Fifth, JKP clearly lacks standing to make any claims as to Padgett's privacy rights. Sixth, even if JKP's "Emergency" motion were to be treated as a petition pursuant to provisions of the 807 KAR 5:001 § 7(2)(a), its claim that its motion may be granted without notice or a hearing is baseless and contrary to provisions of the 807 KAR 5:001 § 7(2)(e). Seventh, had JKP filed a petition as required by Rules, it has failed to meet its burden of proving the material falls within the exclusions from disclosure as required by 807 KAR 5:001 § 7(2)(a)(2)(d).

Accordingly, for the reasons described, the PSC should overrule JKP's "Emergency" motion.

August 16, 2004, Louisville, Kentucky

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Saeid Shafizadeh', with a long horizontal flourish extending to the right.

Saeid Shafizadeh, Complainant  
P.O. Box 21244  
Louisville, Kentucky 40221  
(502) 363-0000

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was served in U.S. Mail with First Class postage prepaid on this August 16, 2004, addressed to:

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Saeid Shafizadeh

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